

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

TENNESSEE CLEAN WATER NETWORK,  
and TENNESSEE SCENIC RIVERS  
ASSOCIATION,  
Plaintiffs,

v.

TENNESSEE VALLEY AUTHORITY,  
Defendant.

No. 3:15-cv-00424  
Judge Haynes  
Magistrate Judge Holmes

**TVA’S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO  
ALL OF PLAINTIFFS’ CLAIMS REGARDING SEEPS**

Pursuant to Federal Rule of Civil Procedure 12(c) and Local Rule 7.01, Tennessee Valley Authority (“TVA”) moves the Court for judgment on the pleadings as to all of Plaintiffs’ claims regarding seeps in this Clean Water Act (“CWA”) citizen suit on the grounds that (1) seeps to the surface water and to groundwater were contemplated by TVA’s CWA regulator, Tennessee Department of Environmental and Conservation (“TDEC”), in 2012 when TDEC reissued National Pollutant Discharge Elimination System Permit No. TN0005428 to Gallatin Fossil Plant, and TDEC made regulatory judgments about the seeps in issuing the permit; (2) a CWA citizen suit against TVA may not be used to attack the regulatory judgments about seeps made by TDEC in issuing the permit; and (3) the Complaint alleges that seeps have occurred and will continue to occur, but it does not allege that seeps are beyond TDEC’s reasonable contemplation at the time TDEC made its regulatory judgments and issued the permit in 2012.

Accordingly, all of Plaintiffs’ citizen suit claims about discharges of pollutants through seeps should be dismissed because they are barred both by the CWA’s permit shield and because

the claims are an impermissible collateral attack on TDEC's regulatory judgments made in the course of issuing a valid permit.<sup>1</sup>

Respectfully submitted,

*s/David D. Ayliffe*

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<sup>1</sup> Plaintiffs' Claim B (Compl., Doc. 1 at PageID 43-46) is not a seeps claim and is the subject of a pending motion to dismiss (Doc. 12).

### **CERTIFICATE OF SERVICE**

I certify that the foregoing document was filed electronically through the Court's ECF system on the date shown in the document's ECF footer. Notice of this filing will be sent by operation of the Court's ECF system to all parties as indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

s/David D. Ayliffe  
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